

AUG 04 2004

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

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2004-11-11 11:23

MUR: 5380  
DATE COMPLAINT FILED: August 6, 2003  
DATE OF NOTIFICATION: August 13, 2003  
DATE ACTIVATED: January 7, 2004

EXPIRATION OF STATUTE OF LIMITATIONS: Earliest 11/2007  
Latest 7/2008

**COMPLAINANT:**

Edward M. Brennan

**RESPONDENTS:**

Honorable Tom DeLay  
Tom DeLay Congressional Committee  
and Dana Benoit, as treasurer  
National Republican Congressional Committee and  
Christopher J. Ward, as treasurer

**RELEVANT STATUTES AND  
REGULATIONS:**

2 U.S.C. § 431(22)  
2 U.S.C. § 431(24)  
2 U.S.C. § 441d(a)  
2 U.S.C. § 441h(b)  
11 C.F.R. § 100.26  
11 C.F.R. § 100.28  
11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:** FEC Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

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**I. INTRODUCTION**

This matter concerns the National Republican Congressional Committee's ("NRCC") solicitation of political contributions through programs known as the "Business Advisory Council" and the "Physicians' Advisory Board." Review of publicly available information revealed that the NRCC administered fundraising programs targeting business owners and physicians. Through those programs, the NRCC contacted individuals by telephone to announce that they were winners of a particular award. During that communication, however, the committee solicited monetary contributions from the award winners. It appears that during many, if not most, of those telephone communications, the caller never identified either the sponsor of the communication or whether any candidates authorized the communication.

The complaint filed in this matter alleged that Congressman Tom DeLay solicited campaign contributions under the guise of an award program. However, publicly available information indicates that the NRCC was the actual source of the solicitations. Although DeLay loaned his voice for a recorded message used by the NRCC during its phone conversations with the award winners, there is no evidence that he participated in the actual calls. As such, this Office recommends that the Commission find reason to believe the NRCC violated 2 U.S.C. § 441d(a) and find no reason to believe that Tom DeLay, his Committee or its treasurer violated the same section.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

In 2003 the complainant received a number of telephone calls from "Congressman DeLay's office" concerning an award he was being given as a local businessman and about an invitation for him to sit on a Congressional advisory committee. Complaint at 1. According to

1 the complainant, "at some point" in a conversation stemming from one of these calls,  
2 representatives who claimed to be from Congressman DeLay's office asked him to pay for  
3 newspaper advertisements supporting various positions of the advisory committee. In response,  
4 the complainant inquired whether "this was a political contribution" and the caller indicated that  
5 it was not. *Id.* at 1. However, when the complainant asked whether the call was from an actual  
6 Congressional committee the caller avoided responding directly and stated instead "that this was  
7 a call from Congressman Delay [sic] asking that [the complainant] participate in his committee."  
8 *Id.* The complainant also requested written materials for more information about the program,  
9 but never received anything. *Id.*

10 Although the complaint does not reference the NRCC, a due diligence review of the  
11 public record revealed that the NRCC was the source of the telephone calls, which are the subject  
12 of this complaint.<sup>1</sup> News articles indicate the NRCC called doctors about the Physicians'  
13 Advisory Board between the years 2000 and 2003.<sup>2</sup> Amy Snow Landa, *GOP fund-raising*  
14 *strategy targets physicians*, American Medical News, Jul. 30, 2001, *available at*  
15 <http://www.ama-assn.org/amednews/>; O'Keefe, *supra* note 2. Further, since 1998 the NRCC has

<sup>1</sup> In 2001, the Commission disposed of three matters under review against the NRCC and Tom DeLay, among others, concerning the Business Advisory Council. MURs 5194, 5206 and 5250. The complaint alleged that business professionals were being offered access to high ranking political officials in exchange for campaign contributions, which in turn resulted in FECA reporting violations. The complainant argued there were reporting violations because the meetings with the political officials constituted contribution offsets that should have been reported as disbursements. The Commission rejected that theory and found no reason to believe that any of the respondents violated the Act. The complainant in those matters also filed a complaint with the Department of Justice ("DOJ") regarding the same activities. DOJ declined to prosecute the matter in July 2001, indicating that the actions alleged did not violate federal bribery statutes.

<sup>2</sup> The number of calls from the Physicians' Advisory Board appeared to decline after doctors complained about them and the American Medical Association criticized the fundraising program. Ed O'Keefe, *GOP Tactic: Tell Them What They've Won! Questions Raised Over House GOP Fund-Raising Pitch*, ABC News, May 2, 2003, *available at* <http://www.abcnews.go.com>. A search of publicly available information revealed fewer news reports and press releases about the Physicians' Advisory Board after 2003. The group, however, continues to operate. <http://www.physiciansadvisoryboard.org/>.

1 been calling business professionals regarding the Business Advisory Council. Jeffrey  
2 McMenemy, *Attorney honored for leadership unsure of reasons*, The Herald (Rock Hill, SC),  
3 Oct. 23, 1998, at 1B; Jonathan Weisman, *House GOP Fundraisers Put Price on Honors*,  
4 Washington Post, Feb. 22, 2003, at A01.

5 Our review of news accounts and other public information indicates that many other  
6 individuals throughout the country received similar telephone calls, purportedly from a  
7 Congressman's office, regarding the same award; it appears that most of the calls were ostensibly  
8 made on behalf of Congressmen Tom Davis, Tom DeLay and Tom Reynolds. These calls were  
9 apparently similar in nature and resulted in solicitations for monetary contributions. *See infra* pp.  
10 4-7. As discussed below, the information available at this time indicates that the calls were made  
11 on behalf of the NRCC, but that the NRCC was not identified as the sponsor of the telephone  
12 communications during many of the calls.

13 Although the complainant summarized the telephone calls that he received, we do not  
14 know the entire contents of those or any similar phone calls. However, through publicly  
15 available information we were able to learn the details of certain parts of those communications.  
16 One business owner posted on his website audio files of what he claimed were actual recorded  
17 phone messages left on his answering machine regarding the "National Leadership Award."  
18 [http://www.jim-frizzell.com/national\\_leadership\\_award.htm](http://www.jim-frizzell.com/national_leadership_award.htm). He received four messages on  
19 behalf of three different Congressmen (i.e., Davis, DeLay and Reynolds) in December 2001,  
20 April 2002, August 2002 and February 2004. *Id.* Only the most recent message actually  
21 identified the NRCC as the source of the telephone call. Those that did not identify the NRCC  
22 proceeded as follows:

1 Hi Mr. James Frizzell, my name is Loretta Lewis with  
2 Congressman Tom DeLay in Washington. We wanted to recognize  
3 you with our business award and I need to speak to you about a  
4 press release. Again, my name is Loretta Lewis. My number is  
5 1-800-650-8375. I would appreciate it if you'd call me as soon as  
6 you get this message. Thank you.

7 *Id.*

8 It seems that similar phone messages were left for other award recipients. Mr. Frizzell's  
9 website contains copies of more than fifty e-mail messages from individuals recounting their own  
10 experiences with similar NRCC solicitations.<sup>3</sup> At least thirty of those messages were posted after  
11 November 2002. Based on a review of those e-mails and of numerous news reports, it appears  
12 that most of the telephone communications the NRCC initiated contain the same language. *See*  
13 Alex Adwan, *Curses, Foiled Again*, Tulsa World (OK), Aug. 24, 2003, at G6; Steve Duin, *GOP*  
14 *Teaches Telemarketers a Few Tricks*, The Oregonian, Sept. 11, 2003, at D01; O'Keefe, *supra*  
15 note 2; Weisman, *supra* at A01; *Profile: House Majority Leader Tom DeLay Using*  
16 *Controversial Telemarketing Tactics to Raise Money for Republican Party* (NBC News: Nightly  
17 News television broadcast, Nov. 10, 2003), *available at* 2003 WL 5437880 [hereinafter  
18 "*Profile*"].

19 Individuals whom the NRCC reached directly, as well as those who called the committee  
20 in response to a phone message, were asked to listen to a message recorded by a member of  
21 Congress (i.e. by Davis, DeLay or Reynolds). O'Keefe, *supra* note 2; Weisman, *supra* at A01.  
22 During that message, the Representative congratulated the listener for being a leading business  
23 owner/physician and invited the listener to become an Honorary Chair of either the Business

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<sup>3</sup> Mr. Frizzell also posted on his website a copy of a fax he received from the NRCC. Unlike the telephone calls, that communication does identify the NRCC. [http://www.jim-frizzell.com/national\\_republican\\_congressional.htm](http://www.jim-frizzell.com/national_republican_congressional.htm).

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Advisory Council ("BAC") or the Physicians' Advisory Board ("PAB").<sup>4</sup> Adwan, *supra* at G6;  
O'Keefe, *supra* note 2. At the end of the recording, a telemarketer came on the line to provide  
further details and to ask for a monetary contribution. O'Keefe, *supra* note 2. During that  
conversation, award recipients were told that as Honorary Chairs they would meet with top  
members of Congress and would be invited to state and national meetings. Landa, *supra*;  
O'Keefe, *supra* note 2. Some award recipients were promised autographed pictures of the  
President and that they would be able to give their input on "major issues before the Congress."  
O'Keefe, *supra* note 2. It appears that individuals who accepted the award invitation were  
promptly asked for a \$300 to \$500 contribution to pay for a Wall Street Journal advertisement  
that was to list the names of the award winners. Adwan, *supra* at G6; Duin, *supra* at D01;  
O'Keefe, *supra* note 2; *Profile, supra*. Only those individuals who made contributions were  
listed in the advertisement. Duin, *supra* at D01.

The evidence gathered suggests that the NRCC may not have identified itself in many of  
its telephone solicitations relating to the BAC or PAB. News reports indicate that many doctors  
and business professionals were not told that the call was from or on behalf of the NRCC or was  
connected to the Republican Party in any way. See John Bresnahan, *Doctors Angered by  
Fundraising Calls Offering Award in Swap for Donation*, Roll Call, Jun. 12, 2000; Landa, *supra*;  
O'Keefe, *supra* note 2. See also John Williams, "The Hammer" now taps doctors, Houston  
Chronicle, Aug. 27, 2001, at A15 (describing NRCC calls received by physicians where there

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<sup>4</sup> The BAC and the PAB are both projects of the NRCC that confer awards on leading business professionals and physicians, and invite those award winners to become Honorary Chairs of the respective group. See <http://www.businessadvisorycouncil.org>; <http://www.physiciansadvisoryboard.org>. On its website, BAC describes itself as "a small prestigious group of conservative businessmen and women" whose members are "selected after an exhaustive search of key business leaders throughout the country." <http://www.businessadvisorycouncil.org>. PAB runs a similar program aimed at doctors. Landa, *supra*.

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1 was no initial mention of fundraising). A number of award recipients reported that some callers  
2 refused to say or avoided saying who actually sponsored the program. Complaint at 1; Libby  
3 Quaid, *GOP Targets doctors for donations*, Associated Press, Jun. 9, 2000. Others who did learn  
4 who paid for the program only ascertained that information after asking questions themselves.  
5 Duin, *supra* at D01.

6 Prior to November 6, 2002, it was unclear whether 2 U.S.C. § 441(d) required disclaimers  
7 on telemarketing calls, whether containing solicitations or express advocacy, placed on behalf of  
8 political committees. However the Bipartisan Campaign Reform Act ("BCRA") and the  
9 regulations thereunder removed any ambiguity by specifying that public communications through  
10 telephone banks were included in the types of "general public political advertising" subject to the  
11 disclaimer requirement. *See infra* pp. 11-12. In addition to the complaint and the e-mail  
12 messages discussed above, *supra* pp. 2-5, there is other evidence that indicates that NRCC  
13 fundraising programs such as the BAC continue to operate since BCRA became effective without  
14 identifying the NRCC as the sponsor in telephone solicitations. Award winners interviewed for  
15 an ABC News story in 2003 indicated that during the telephone calls they received about their  
16 awards, neither the sponsor of the calls nor "any connect[ion] to the Republican party's efforts"  
17 were identified. O'Keefe, *supra* note 2. Thus, it appears the NRCC may have continued to  
18 utilize the same approach it had used in the past in the telephone solicitations it conducted after  
19 November 2002. The extent to which, and the consistency with which, NRCC telephone  
20 solicitations contained disclaimers after November 2002 remains to be determined. Other

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1 post-BCRA news reports document portions of actual NRCC telephone solicitations, but they are  
2 unclear as to whether disclaimers were included.<sup>5</sup>

3 Information gathered about the BAC and PAB indicates that their primary purpose is to  
4 raise funds for the NRCC. While some award recipients interviewed for news articles recalled  
5 completing one or more surveys for the groups, no one at the NRCC could explain how such  
6 input actually reaches Congressional leaders.<sup>6</sup> Landa, *supra*. Rather, most award winners report  
7 that after accepting an invitation to become Honorary Chairs, they were periodically invited to  
8 various functions that required substantial attendance fees. Weisman, *supra* at A01. Award  
9 winners were charged a fee to attend a dinner to receive their own awards, while others never  
10 received the award certificate that was promised to them during the NRCC telephone

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<sup>5</sup> It appears, from those reports, that the contents of the solicitations were similar to those made to the complainant. For instance, in 2003 NBC Nightly News recorded the conversation an Air Force Chaplain had with a telemarketer regarding the BAC's National Leadership Award. See Lisa Myers, *Tom DeLay: Politician or Telemarketer? Majority Leader Uses Offer of Honor in Push for Funds*, NBC News, Nov. 10, 2003, available at <http://msnbc.msn.com/id/3476031>; *Profile, supra*. Based on the excerpts provided in the story, there is no question that a solicitation for a monetary contribution took place during the telephone call. However, it is unclear whether the NRCC was ever identified as having paid for the communication. Other individuals have discussed their recent experiences with the same types of solicitations, and as with the instance discussed above, it remained unclear whether sponsorship information was ever communicated to them. See e.g. Adwan, *supra* at G6 (describing one journalist's phone conversation with telemarketers regarding his National Leadership Award in 2003); Barbara Solow, *Dubious honor for local doctors*, Independent Weekly (Durham, NC), Dec. 25, 2002, available at <http://www.indyweek.com/durham/2002-12-25/porch2.html> (recounting one physician's experience with calls from "DeLay's" office regarding the PAB in 2002); Weisman, *supra* at A01 (reporting on the NRCC's telephone solicitations in early 2003 and describing the general script followed during the calls).

<sup>6</sup> The awards conferred through the BAC and PAB include the "National Leadership Award," "Businessman/Businesswoman of the Year" and "Physician of the Year." It is unknown whether the NRCC uses any criteria for selecting winners. All award winners are asked to become Honorary Chairs of the BAC or PAB, which results in thousands of Honorary Chairs in any given year. For instance, in February 2003 one Wall Street Journal advertisement listed over 1,900 people as businessmen and women of the year for 2003. Weisman, *supra* at A01. Honorary Chairs in both programs can participate in the groups by allowing their names to be used in advertising, attending strategy sessions and policy briefings, completing surveys, and making financial contributions. See <http://www.businessadvisorycouncil.org>; <http://www.physiciansadvisoryboard.org>.

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calls.<sup>7</sup> *Id.*

2 The NRCC itself appears to treat the BAC and the PAB as fundraising programs. On its  
3 website, the NRCC lists both groups as "Individual contribution opportunities." [http://teamnrcc.](http://teamnrcc.org/nrccdocs/quicklinks/)  
4 [org/nrccdocs/quicklinks/](http://teamnrcc.org/nrccdocs/quicklinks/). It has described the PAB as a "partial fund-raising group" and  
5 explained that the PAB was one of their "most successful programs," acknowledging that  
6 "[t]here is a fund-raising component" to the PAB. Landa, *supra*; Quaid, *supra*; Matt Smith,  
7 *GOP to pot doctor: Good job!*, San Francisco Weekly, Jul. 18, 2001. In 2003, an NRCC  
8 spokesman acknowledged that the BAC was "more or less a marketing tool" and that "[t]he  
9 honorary chairmen are all periodically asked for donations." David Lazarus, *A Call From Tom*  
10 *DeLay*, San Francisco Chronicle, Sept. 28, 2003, at I.1. The spokesman also explained that the  
11 BAC was important because "with campaign finance reform we have to look for new avenues of  
12 fund-raising." *Id.* However, in response to questions surrounding the details of the programs,  
13 one spokesman stated "[i]n regard to fundraising tactics, we're just like KFC: The colonel  
14 doesn't reveal the recipe." Pete Yost, *GOP Calls Offer Access to Top Bush Officials; DeLay*  
15 *Seeks Money from Business Owners*, The Record (Bergen Cty., NJ), Apr. 4, 2001, at A18.  
16 Finally, the NRCC has not been able to explain how money raised through the BAC and PAB  
17 could be used, other than for funding Republican Congressional campaigns. According to one  
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<sup>7</sup> One Physician of the Year award recipient who wanted to attend her award dinner was told that she would have to pay \$5,000 to attend. After refusing to pay, she was offered a lower rate of \$1,250. After still refusing to pay, the physician was told that she could not attend the event but could keep her faxed copy of the award certificate. It was not until a reporter intervened that the physician was permitted to attend the event without paying. Weisman, *supra* at A01.

1 NRCC spokesperson, "it would probably just go into the [committee's] general fund."<sup>8</sup> Landa,  
2 *supra*.

3 Further, the NRCC pays telemarketing vendors to make telephone calls on its behalf for  
4 fundraising programs such as the PAB and BAC. A review of FEC disclosure reports reveals  
5 that post-BCRA the NRCC made disbursements to InfoCision Management Corporation  
6 ("InfoCision") as well as to three other vendors for "Phone Banks."<sup>9</sup> However, the  
7 disbursements made to InfoCision were larger and news accounts have established a specific  
8 connection between InfoCision and the BAC and PAB programs. Jim Drinkard, *With New Law*,  
9 *GOP Routs Democrats in Fundraising*, USA TODAY, Aug. 21, 2003, at 1A; Jim VandeHei and  
10 Juliet Eilpern, *For GOP, A High-Priced Pitch; Firm Gets \$16 million over Four Months for*  
11 *Fundraising Work*, Washington Post, Jun. 16, 2003, at A04. The NRCC has been working with  
12 InfoCision since 1993 and under a recent arrangement with them, the NRCC is guaranteed to  
13 receive at least a dollar in contributions for every dollar that it pays the firm.<sup>10</sup> Cillizza, *supra*  
14 note 10; VandeHei, *supra* at A04. According to news reports, from January 1 through March 31,

<sup>8</sup> In one news account, the NRCC claimed that through programs like the BAC, it is "merely recognizing business leaders and inviting them to periodic conferences and banquets. No money need to be given to accept the honor, although there is a fee for the gatherings." Weisman, *supra* at A01. However, some recipients were told that a donation was required to become an Honorary Chair. See e.g., Bresnahan, *supra*; O'Keefe, *supra* note 2; Quaid, *supra*. Moreover, even if "no money need be given," it is unknown whether award recipients are ever told that they would have to pay fees to attend any of the events.

<sup>9</sup> According to FEC records, the NRCC made disbursements for the purpose of "Phone Banks" to a number of different vendors. In 2003, it paid Conquest Communications \$166,206.19, Larson & Synhorst \$281,788.78, and Strategic Telecommunications \$71,789.50. So far in 2004, the NRCC has paid Strategic Telecommunication \$907,625.18. Over the years the NRCC has made its largest disbursements for the purpose of "Phone Banks" to InfoCision. See e.g. Attachment 1, *Sample NRCC Disclosure Reports*. In 2003 it paid InfoCision \$35,527,815.42 and has paid InfoCision \$8,761,120.41 so far in 2004. Further, InfoCision was the only firm the NRCC used for phone banks in November and December 2002.

<sup>10</sup> InfoCision, founded in 1982, is a telemarketing service based out of Akron, Ohio that works only for conservative groups such as the NRCC and the National Rifle Association. Chris Cillizza, *Calls Fuel NRCC*, Roll Call, Apr. 2, 2003; VandeHei, *supra* at A04. Its fundraising department is composed of five divisions: political, non-profit, Christian, commercial, and volunteer recruitment. <http://www.infocision.com>. In 2003, it employed over 2,600 workers, including 1,600 telemarketers, at over twenty call centers throughout the country. Cillizza, *supra*.

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1 2003, the telemarketing firm made about two million fundraising calls on behalf of the NRCC  
2 and added about 100,000 new donors to the NRCC's contributor list, with contributions  
3 averaging \$100 per person. Cillizza, *supra* note 10. Rodney Smith, a telemarketing expert,  
4 created the phone pitches used by InfoCision for the NRCC's fundraising programs. VandeHei,  
5 *supra* at A04. It appears that NRCC Chairman Tom Reynolds approves Smith's scripts before  
6 they are sent to InfoCision. *Id.* When asked about the NRCC's large payments to InfoCision,  
7 NRCC Chairman Tom Reynolds stated that "[w]e're in a whole new world of fundraising . . . we  
8 need to experiment." VandeHei, *supra* at A04.

9 **B. Analysis**

10 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), the NRCC is  
11 required to provide a disclaimer during certain political communications. In 2002, BCRA  
12 expanded the Act's disclaimer provisions to apply to telephone banks.<sup>11</sup> *See* 2 U.S.C.  
13 §§ 441d(a), 431(22), 431(24); 11 C.F.R. §§ 110.11, 100.26. Although the disclaimer statute does  
14 not make specific reference to them, BCRA added the term "public communication" which  
15 includes "telephone banks" as part of its definition. *See* 2 U.S.C. § 431(22); 11 C.F.R. § 100.26.  
16 The Commission has also explained that "each form of communication specifically listed in the  
17 definition of 'public communication,' as well as each form of communication listed with  
18 reference to a 'communication' in 2 U.S.C. § 441d(a), must be a form of 'general public political  
19 advertising.'" Explanation and Justification, *Disclaimers, Fraudulent Solicitations, Civil*  
20 *Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002).

<sup>11</sup> As discussed earlier, *supra* p. 7, until BCRA it was unclear whether the disclaimer provisions of the Act applied to telephone banks. Thus, this analysis focuses on potential violations that occurred after November 6, 2002, the effective date of BCRA.

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Specifically, the Act requires disclaimers “whenever any person . . . solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising advertising [sic] facility, mailing, or *any other type of general public political advertising.*” 2 U.S.C. § 441d(a) [emphasis added]. As a form of general public political advertising, telephone banks are defined as “more than 500 telephone calls of an identical or substantially similar nature within any 30 day period.” 2 U.S.C. § 431(24). Telephone calls are substantially similar when they “include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient’s name, occupation, or geographic location.” 11 C.F.R. § 100.28.

The telephone calls at issue here may have required disclaimers. They apparently solicited contributions to the NRCC, and based on the number of press accounts in the public record there is sufficient evidence to investigate whether the number of calls made surpassed the five hundred phone calls within the 30-day period the statute requires. In addition, publicly available information indicates that those telephone calls were substantially similar in nature: the calls seemed to follow a script where the caller informed the recipient that they had been selected for an award, played a recorded message for the award winner and proceeded to ask for a contribution. *See e.g.* Adwan, *supra* at G6; Duin, *supra* at D01; O’Keefe, *supra* note 2; Weisman, *supra* at A01; *Profile, supra*. As a committee that is not authorized by any candidate, when the NRCC makes a public communication it must clearly state the name, address, telephone number or website address of who paid for the communication and state that the communication was not authorized by any candidate. 2 U.S.C. § 441d(a)(3). *See e.g.* <http://www.nrcc.org> (providing the proper disclaimer on its website). Because there is evidence

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1 that even after BCRA's effective date many NRCC phone solicitations did not contain the proper  
2 disclaimer, this Office recommends that the Commission internally generate the NRCC and  
3 Christopher J. Ward, as treasurer, as Respondents and find that they violated 2 U.S.C.  
4 § 441d(a).<sup>12</sup>

5 While it appears that Congressman DeLay, along with other members of Congress,  
6 approved the use of their names in these NRCC programs, there is nothing to indicate that DeLay  
7 himself violated the disclaimer provisions of the Act. Thus, this Office recommends the  
8 Commission find no reason to believe that Tom DeLay and his Committee violated 2 U.S.C.  
9 § 441d(a).

10 **III. INVESTIGATION**

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<sup>12</sup> Although the complaint alleges that the telephone calls received constituted "deceptive" fundraising, there is nothing to indicate that there was any fraudulent misrepresentation of authority in the NRCC's calls to award recipients that would establish a violation of 2 U.S.C. § 441h(b). While the callers indicated they were calling on behalf of particular Congressmen, the NRCC appeared to have the authority to use those Representatives' names: the Congressmen had tape-recorded messages for the NRCC to use in its telephone communications. *See supra* pp. 5-6.

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IV. RECOMMENDATIONS

1. Find reason to believe the National Republican Congressional Committee and Christopher J. Ward, as treasurer, violated 2 U.S.C. § 441d(a).
2. Find no reason to believe that the Honorable Tom DeLay, the Tom DeLay Congressional Committee and Dana Benoit, as treasurer, violated 2 U.S.C. § 441d(a).
3. Approve the attached Factual and Legal Analysis.
- 4.
5. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

BY:

Date

8/2/04

Lawrence L. Calvert, Jr.  
Deputy Associate General Counsel  
for Enforcement

Sidney Locke  
Assistant General Counsel

Ana J. Peña-Wallace  
Attorney

Attachments:

- 1- Sample NRCC Disclosure Reports
- 2- Factual and Legal Analysis

**DISBURSEMENT SCHEDULE H4 (FEC Form 3X)**  
**JOINT FEDERAL/NON-FEDERAL ACTIVITY SCHEDULE**

PAGE 687 / 911  
 FOR LINE 21a OF FORM SX

NAME OF COMMITTEE (In Full)  
 NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

A. Full Name (Last, First, Middle Initial) INFOCISION MANAGEMENT CORP.			Type of Allocated Activity: <input type="checkbox"/> Admin/Voter Drive <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Exempt <input type="checkbox"/> Direct Candidate Support	
Mailing Address 325 SPRINGSIDE DRIVE AKRON OH 44333			Event Year-To-Date 2672727.23	
City AKRON	State OH	Zip Code 44333	COM	Date 09 11 2002
Purpose/Event: Phone Banks			Category/ Type	
Description: 312-309-301-311				

FEDERAL SHARE	+	NON-FEDERAL SHARE	=	TOTAL AMOUNT
177093.42		75897.18		252990.60

Transaction ID: H4093002-10125

A. Full Name (Last, First, Middle Initial) INFOCISION MANAGEMENT CORP.			Type of Allocated Activity: <input type="checkbox"/> Admin/Voter Drive <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Exempt <input type="checkbox"/> Direct Candidate Support	
Mailing Address 325 SPRINGSIDE DRIVE AKRON OH 44333			Event Year-To-Date 2672727.23	
City AKRON	State OH	Zip Code 44333	COM	Date 09 10 2002
Purpose/Event: Phone Banks			Category/ Type	
Description: 312-309-301-311				

FEDERAL SHARE	+	NON-FEDERAL SHARE	=	TOTAL AMOUNT
1399.06		599.60		1998.66

Transaction ID: H4093002-10126

A. Full Name (Last, First, Middle Initial) INFOCISION MANAGEMENT CORP.			Type of Allocated Activity: <input type="checkbox"/> Admin/Voter Drive <input checked="" type="checkbox"/> Fundraising <input type="checkbox"/> Exempt <input type="checkbox"/> Direct Candidate Support	
Mailing Address 325 SPRINGSIDE DRIVE AKRON OH 44333			Event Year-To-Date 2672727.23	
City AKRON	State OH	Zip Code 44333	COM	Date 09 18 2002
Purpose/Event: Phone Banks			Category/ Type	
Description: 312-309-301-311				

FEDERAL SHARE	+	NON-FEDERAL SHARE	=	TOTAL AMOUNT
51812.82		22119.69		73932.51

Transaction ID: H4093002-10127

**SUBTOTAL of Joint Federal and Non-Federal Activity This Page**

FEDERAL SHARE	+	NON-FEDERAL SHARE	=	TOTAL AMOUNT
230105.10		98616.47		328721.57

**TOTAL This Period (list page for each line only) (Federal share to 21(a)(1) and non-Federal share to 21(a)(1))**

FEDERAL SHARE	TOTAL AMOUNT
---------------	--------------

NON-FEDERAL SHARE

**TOTAL This Period for the Non-Federal Share**  
 (used for line 31 of the detailed summary page)

26044144271



**SCHEDULE B (FEC Form 3X)  
ITEMIZED DISBURSEMENTS**

 Use separate schedule(s)  
for each category of the  
Detailed Summary Page

 FOR LINE NUMBER  
(check only one)

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<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25
<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c
<input type="checkbox"/> 29				

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NAME OF COMMITTEE (in full)

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

Full Name (Last, First, Middle Initial)

**A. INFOCISION MANAGEMENT CORP.**

Mailing Address

325 SPRINGSIDE DRIVE

AKRON OH 44333

City

State

Zip Code

AKRON

OH

44333

Purpose of Disbursement

Phone Banks

Candidate Name

 15  
Category/  
Type

Office Sought:

House

Disbursement For:

2004

Senate

Primary

General

President

Other (specify)

State: 00

District: 00

Date of Disbursement

11 / 06 / 2002

Amount of Each Disbursement this Period

850818.85

Transaction ID: B21B112502-11879

Full Name (Last, First, Middle Initial)

**B. INFOCISION MANAGEMENT CORP.**

Mailing Address

325 SPRINGSIDE DRIVE

AKRON OH 44333

City

State

Zip Code

AKRON

OH

44333

Purpose of Disbursement

Phone Banks

Candidate Name

 15  
Category/  
Type

Office Sought:

House

Disbursement For:

2004

Senate

Primary

General

President

Other (specify)

State: 00

District: 00

Date of Disbursement

11 / 18 / 2002

Amount of Each Disbursement this Period

467.00

Transaction ID: B21B112502-11880

Full Name (Last, First, Middle Initial)

**C. INFOCISION MANAGEMENT CORP.**

Mailing Address

325 SPRINGSIDE DRIVE

AKRON OH 44333

City

State

Zip Code

AKRON

OH

44333

Purpose of Disbursement

Phone Banks

Candidate Name

 15  
Category/  
Type

Office Sought:

House

Disbursement For:

2004

Senate

Primary

General

President

Other (specify)

State: 00

District: 00

Date of Disbursement

11 / 18 / 2002

Amount of Each Disbursement this Period

518162.60

Transaction ID: B21B112502-11881

SUBTOTAL of Disbursements This Page (optional)

1389248.25

TOTAL This Period (last page this line number only)

# SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS

Use separate schedule(s)  
for each category of the  
Detailed Summary Page

FOR LINE NUMBER  
(check only one)

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☒ 21b ☐ 22 ☐ 23 ☐ 24 ☐ 25 ☐ 26  
☐ 27 ☐ 28a ☐ 28b ☐ 28c ☐ 29 ☐ 30b

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NAME OF COMMITTEE (In Full)

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

Full Name (Last, First, Middle Initial)

Transaction ID: B21B123103-665

Date of Disbursement

12<sup>th</sup> 18<sup>th</sup> 2003

## A. SMS DIRECT INC.

Mailing Address 7540 MASON KING COURT  
MANASSAS VA 20109

City MANASSAS State VA Zip Code 20109

Amount of Each Disbursement this Period

16320 00

Purpose of Disbursement

Postage

Candidate Name

Category/  
Type

Office Sought

House

Senate

President

Disbursement For

2004

Primary

General

Other (specify) ▼

State

District:

Full Name (Last, First, Middle Initial)

Transaction ID: B21B123103-666

Date of Disbursement

12<sup>th</sup> 26<sup>th</sup> 2003

## B. CAITLIN B. CARROLL

Mailing Address 610 TUALITAN RD  
LOS ANGELES CA 90049

City LOS ANGELES State CA Zip Code 90049

Amount of Each Disbursement this Period

954.38

Purpose of Disbursement

Salaries

Candidate Name

Category/  
Type

Office Sought

House

Senate

President

Disbursement For

2004

Primary

General

Other (specify) ▼

State

District:

Full Name (Last, First, Middle Initial)

Transaction ID: B21B123103-667

Date of Disbursement

12<sup>th</sup> 18<sup>th</sup> 2003

## C. INFOCISION MANAGEMENT CORP

Mailing Address 325 SPRINGSIDE DRIVE  
AKRON OH 44333

City AKRON State OH Zip Code 44333

Amount of Each Disbursement this Period

14411 92

Purpose of Disbursement

Phone Banks

Candidate Name

Category/  
Type

Office Sought

House

Senate

President

Disbursement For

2004

Primary

General

Other (specify) ▼

State

District:

SUBTOTAL of Disbursements This Page (optional)

31686.30

TOTAL This Period (last page this line number only)

**SCHEDULE B (FEC Form 3X)**  
**ITEMIZED DISBURSEMENTS**

 Use separate schedule(s)  
 for each category of the  
 Detailed Summary Page

 FOR LINE NUMBER:  
 (check only one)

PAGE 2082 / 2422

<input checked="" type="checkbox"/>	21b	<input type="checkbox"/>	22	<input type="checkbox"/>	23	<input type="checkbox"/>	24	<input type="checkbox"/>	25	<input type="checkbox"/>	26
<input type="checkbox"/>	27	<input type="checkbox"/>	28a	<input type="checkbox"/>	28b	<input type="checkbox"/>	28c	<input type="checkbox"/>	29	<input type="checkbox"/>	30b

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NAME OF COMMITTEE (in Full)

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

**A. INFOCISION MANAGEMENT CORP.**

 Mailing Address 325 SPRINGSIDE DRIVE  
 AKRON OH 44333

City AKRON State OH Zip Code 44333

 Purpose of Disbursement  
 Phone Banks

Candidate Name

Office Sought:	House Senate President	Disbursement For:	2004 Primary General Other (specify) ▼
State:	District		

 Category/  
 Type

 Transaction ID: B21B022904-127  
 Date of Disbursement

02 / 24 / 2004

Amount of Each Disbursement this Period

526366.43

**B. CATHERINE M. HAYES**

 Mailing Address 1202 S. WASHINGTON ST #403  
 ALEXANDRIA VA 22314

City ALEXANDRIA State VA Zip Code 22314

 Purpose of Disbursement  
 Travel

Candidate Name

Office Sought:	House Senate President	Disbursement For:	2004 Primary General Other (specify) ▼
State:	District		

 Category/  
 Type

 Transaction ID: B21B022904-128  
 Date of Disbursement

02 / 12 / 2004

Amount of Each Disbursement this Period

101.63

**C. DCDDES**

 Mailing Address P.O. BOX 1582  
 WASHINGTON DC 20013

City WASHINGTON State DC Zip Code 20013

 Purpose of Disbursement  
 Payroll Tax

Candidate Name

Office Sought:	House Senate President	Disbursement For:	2004 Primary General Other (specify) ▼
State:	District		

 Category/  
 Type

 Transaction ID: B21B022904-129  
 Date of Disbursement

02 / 20 / 2004

Amount of Each Disbursement this Period

102.25

SUBTOTAL of Disbursements This Page (optional) ▶

526570.31

TOTAL This Period (last page this line number only) ▶

FEC Schedule B (Form 3X) Rev. 02/2003

ATTACHMENT

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26044144274